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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

10 RONALD ANTHONY JONES,  
11 Plaintiff,  
12 v.  
13 KYLE RUNGE, et al.,  
14 Defendants.

15 Case No. 21-00281 BLF (PR)

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**ORDER OF DISMISSAL AND  
DISMISSAL WITH LEAVE TO  
AMEND**

Plaintiff, a state prisoner, filed the instant pro se civil rights action pursuant to 42 U.S.C. § 1983 against officers at San Quentin State Prison (“SQSP”), where he is currently housed. Dkt. Not. 1 at 2. Plaintiff’s motion for leave to proceed *in forma pauperis* will be addressed in a separate order.

**DISCUSSION**

**A. Standard of Review**

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim

1 upon which relief may be granted or seek monetary relief from a defendant who is immune  
2 from such relief. *See id.* § 1915A(b)(1), (2). Pro se pleadings must, however, be liberally  
3 construed. *See Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988).

4 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential  
5 elements: (1) that a right secured by the Constitution or laws of the United States was  
6 violated, and (2) that the alleged violation was committed by a person acting under the  
7 color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

8 **B. Plaintiff’s Claims**

9 Plaintiff claims that on October 11, 2018, he was sent to administrative segregation  
10 for allegedly possessing a cell phone, and his personal property was taken away by  
11 Defendants Kyle Runge and Glen Amor, the “property officers” at SQSP. Dkt. No. 1 at 3,  
12 7. On November 7, 2018, Plaintiff was found guilty of the Rules Violation Report for  
13 possession of a cell phone and was directed to send his personal property home. *Id.* at 9.  
14 When he contacted Defendants Runge and Amor to return his property to him, they  
15 refused. *Id.* Plaintiff claims Defendants are responsible for the “random” and  
16 “unauthorized withholding” of his personal property in violation of his rights under due  
17 process, the Eighth Amendment, and equal protection. Dkt. No. 1 at 20-21. Plaintiff seeks  
18 declaratory and injunctive relief as well as damages. *Id.* at 21.

19 Inmates who have been afforded the opportunity to possess personal property in  
20 prison may claim that prison officials have confiscated or destroyed their property without  
21 due process. Ordinarily, due process of law requires notice and an opportunity for some  
22 kind of hearing prior to the deprivation of a significant property interest. *See Memphis*  
23 *Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 19 (1978). However, neither the negligent  
24 nor intentional deprivation of property states a due process claim under § 1983 if the  
25 deprivation was random and unauthorized. *See Parratt v. Taylor*, 451 U.S. 527, 535-44  
26 (1981) (state employee negligently lost prisoner’s hobby kit), *overruled in part on other*  
27 *grounds, Daniels v. Williams*, 474 U.S. 327, 330-31 (1986); *Hudson v. Palmer*, 468 U.S.

1 517, 533 (1984) (intentional destruction of inmate's property). The availability of an  
2 adequate state post-deprivation remedy, e.g., a state tort action, precludes relief because it  
3 provides sufficient procedural due process. *See Zinermon v. Burch*, 494 U.S. 113, 128  
4 (1990) (where state cannot foresee, and therefore provide meaningful hearing prior to,  
5 deprivation statutory provision for post-deprivation hearing or common law tort remedy  
6 for erroneous deprivation satisfies due process). California law provides such an adequate  
7 post-deprivation remedy. *See Barnett v. Centoni*, 31 F.3d 813, 816-17 (9th Cir. 1994)  
8 (citing Cal. Gov't Code §§ 810-895). Here, Plaintiff alleges that the loss of personal  
9 property was random and unauthorized. Dkt. No. 1 at 20. As such, the availability of an  
10 adequate state post-deprivation remedy, e.g., a state tort action, precludes relief because it  
11 provides sufficient procedural due process. *See Zinermon*, 494 U.S. at 128. Accordingly,  
12 his due process claim must be dismissed for failure to state a claim for relief. Plaintiff may  
13 pursue this claim in state court.

14 Plaintiff's claim under the Eighth Amendment must also be dismissed for failure to  
15 state a claim. The Eighth Amendment imposes duties on prison officials to provide all  
16 prisoners with the basic necessities of life such as food, clothing, shelter, sanitation,  
17 medical care and personal safety. *See Farmer v. Brennan*, 511 U.S. 825, 832 (1994);  
18 *DeShaney v. Winnebago County Dep't of Social Servs.*, 489 U.S. 189, 199-200 (1989);  
19 *Hoptowit v. Ray*, 682 F.2d 1237, 1246 (9th Cir. 1982). A prison official violates the  
20 Eighth Amendment when two requirements are met: (1) the deprivation alleged must be,  
21 objectively, sufficiently serious, *Farmer*, 511 U.S. at 834 (citing *Wilson v. Seiter*, 501 U.S.  
22 294, 298 (1991)), and (2) the prison official possesses a sufficiently culpable state of mind,  
23 *id.* (citing *Wilson*, 501 U.S. at 297). The inventory of Plaintiff's personal property  
24 included in the exhibits to the complaint lists the following items: watch cap, washcloth,  
25 paints and brushes, glue, books, photos and albums, writing supplies, utensils, bowl,  
26 toothbrushes and holders, bead necklace, glass cases, TV cable splitter, electric razor,  
27 trimmer, headphones, ear buds, headphone extension, extension cords, cassette tapes, AC

1 adaptor, watch, batteries, hot pot, mirrors, earring, and empty CD cases. Dkt. No. 1-1 at  
2 12, 24. It cannot be said that any of these items constitutes a basic necessity of life, the  
3 loss of which rises to the level of an objectively serious deprivation. Accordingly, Plaintiff  
4 fails to state an Eighth Amendment claim based on the loss of personal property.

5 Lastly, Plaintiff's allegations fail to state an equal protection claim. When  
6 challenging his treatment with regard to other prisoners, courts have held that in order to  
7 present an equal protection claim a prisoner must allege that his treatment is invidiously  
8 dissimilar to that received by other inmates. *More v. Farrier*, 984 F.2d 269, 271-72 (8th  
9 Cir. 1993) (absent evidence of invidious discrimination, federal courts should defer to  
10 judgment of prison officials); *Timm v. Gunter*, 917 F.2d 1093, 1099 (8th Cir. 1990) (same).  
11 The first step in determining whether the inmate's equal protection rights were violated is  
12 to identify the relevant class of prisoners to which he belongs. *Furnace v. Sullivan*, 705  
13 F.3d 1021, 1030 (9th Cir. 2013). The class must be comprised of similarly situated  
14 persons so that the factor motivating the alleged discrimination can be identified. *Id.* at  
15 1031 (affirming district court's grant of defendants' motion for summary judgment  
16 because inmate failed to raise triable issue of fact that he was treated differently than any  
17 other inmate whom the officers did not know was entitled to a vegetarian meal). Here,  
18 there is no allegation that Plaintiff is a member of a specific class and that he was  
19 subjected to dissimilar treatment because of his membership in that class. Rather, Plaintiff  
20 claims that other inmates had their grievances regarding personal property granted while  
21 his was denied. Dkt. No. 1 at 12. He cites to a memorandum from the associate warden  
22 that states, "The Title 15 does and will continue to apply to all CDCR inmates equally  
23 regardless of their custody designation" and that "all CDCR inmates are subject to the  
24 same rules and regulations regardless of their custody designation." *Id.* at 11. However,  
25 even if Defendants violated these state regulations, their actions do not establish a  
26 constitutional claim under § 1983 because it fails to satisfy the first prong, i.e., that a right  
27 secured by the Constitution or laws of the United States was violated. *See West v. Atkins*,

1 487 U.S. at 48. Accordingly, this equal protection claim must be dismissed for failure to  
2 state a claim.

3 Plaintiff shall be granted one opportunity to file an amended complaint to attempt to  
4 correct the deficiencies described above with respect to his Eighth Amendment and equal  
5 protection claims.

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7 **CONCLUSION**

8 For the foregoing reasons, the Court orders as follows:

9 1. Plaintiff's due process claim based on the loss of his personal property is  
10 **DISMISSED** with prejudice for failure to state a claim for relief. He may pursue that  
11 claim in state court.

12 2. The remainder of the complaint is **DISMISSED with leave to amend**.  
13 Within **twenty-eight (28) days** of the date this order is filed, Plaintiff shall file an amended  
14 complaint to correct the deficiencies described above. The amended complaint must  
15 include the caption and civil case number used in this order, Case No. C 21-00281 BLF  
16 (PR), and the words "AMENDED COMPLAINT" on the first page. If using the court  
17 form complaint, Plaintiff must answer all the questions on the form in order for the action  
18 to proceed. The amended complaint supersedes the original, the latter being treated  
19 thereafter as non-existent. *Ramirez v. Cty. Of San Bernardino*, 806 F.3d 1002, 1008 (9th  
20 Cir. 2015). Consequently, claims not included in an amended complaint are no longer  
21 claims and defendants not named in an amended complaint are no longer defendants. See  
22 *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir.1992).

23 2. **Failure to respond in accordance with this order in the time provided**  
24 **will result in the dismissal of this action without further notice to Plaintiff.**

25 3. The Clerk shall include two copies of the court's **complaint** with a copy of  
26 this order to Plaintiff.

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**IT IS SO ORDERED.**

Dated: May 11, 2021

  
BETH LABSON FREEMAN  
United States District Judge

Order of Dism. and Dism. With Leave to Amend  
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